IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WA.No. 2147 of 2005

AGAINST THE JUDGEMENT IN WPC.28798/2004 Dated 27/05/2005

APPELLANT: PETITIONER:

VARKEY ABRAHAM, S/O.VARKEY,
POOVATHINAL HOUSE, AMBARANIRAPPEL P.O.,
VIA- BHARANANGANAM, KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS: RESPONDENTS:

1. THE SECRETARY TO GOVERNMENT
(REVENUE DEPARTMENT), SECRETARIAT,
TRIVANDRUM.

2. THE COMMISSIONER, LAND REVENUE,
TRIVANDRUM.

3. THE DISTRICT COLLECTOR, KOTTAYAM.

4. THE TAHSILDAR, MEENACHIL.

BY SENIOR GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON 25/07/2007 DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 2147 OF 2005 E

Dated this the 25th July, 2007

JUDGMENT

SANKARAN, J.

The main question which arises for consideration in this Writ Appeal is whether a person whose family possesses large extent of lands could apply for invoking the powers of the Government under Rule 24 of the Kerala Land Assignment Rules, to assign, in public interest, dispensing with the provisions contained in the Rules, land adjoining his extensive lands and that too, to get assignment of an extent of land more than that could be assigned under the Rules.

2. The petitioner in the Writ Petition (appellant herein) was in possession of 34.97 acres of land. He filed a statement before the Land Board, as required under Section 85 (A)(1) of the Kerala Land Reforms Act. The Land Board transferred the statement to the Taluk Land Board, Meenachil, under Section 85 A (3) of the said Act. The Taluk Land Board, in its proceedings dated 11-9-1976, accepted the return and held that the petitioner was not required to surrender any excess land. He was not required to surrender excess land since an extent of 22.49 acres was under the category exempted for the purpose of computing the ceiling area.

3. It is stated by the petitioner that his father was in possession of 4.35 acres of Government puramboke land. Out of the 4.35 acres of land, an extent of 1.15 acres of land was assigned to the father of the petitioner in Puthuvel Case No. 251 of 1105 M.E. The balance extent of 3.20 acres of Government land is the subject matter of the present case.

4. The petitioner filed Ext. P1 application dated 3-6-1985 under Rules 11(8) and 16 (1) of the Kerala Land Assignment Rules (hereinafter referred to as the 'Rules') before the Tahsildar for assignment 3.20 acres of land. It is stated in Exhibit P1 that the petitioner is in possession of 12.48 acres of land other than the Government land. The Tahsildar filed a report to the District Collector, which according to the petitioner was favourable to him. As per Exhibit P2 order dated 22-5-1999, the District Collector, Kottayam, rejected the application holding that the petitioner is in possession of lands in excess of the ceiling limit under the Kerala Land Reforms Act. The petitioner filed Exhibit P5 appeal against that order. The appellate authority, namely, the Commissioner of Land Revenue, Thiruvananthapuram, by his order dated 22-9-2000 (Ext. P6) set aside Ext.P2 order passed by the District Collector, holding that the authority to consider the application is the Tahsildar. The Tahsildar was directed

to consider the application. However, it was found in Exhibit P6 order that the family of the petitioner is in possession of 13.05.67 hectares of land. The Tahsildar rejected the application by Exhibit P11 order dated 30-12-2002, holding that he has no jurisdiction to assign land for the 'beneficial enjoyment' and that the maximum extent that could be assigned for beneficial enjoyment under Rule 6 (2) is 25 cents. It is also stated in Exhibit P11 order that major portion of the land is rocky.

5. Ext. P11 order passed by the Tahsildar was challenged by the petitioner before this Court in O.P. No. 6146 of 2003, which was disposed of as per Exhibit P12 judgment dated 11-6-2003, holding thus:

> "As per Rule 6 (2) the maximum extent prescribed is 25 cents for the assignment of land. However, according to the petitioner, the Government has got ample power to dispense with the extent of land provided under the Rules. It is up to the petitioner to move the Government in this regard. Ext. P11 order cannot be set aside by this court and the remedy, if any, of the petitioner is only to move the Government.

6. Thereafter, the petitioner moved the Government as per Exhibit P13 representation dated 20-6-2003. The Government rejected the application by Exhibit P15 order dated 22-1-2004. In Exhibit P15 order, reference is made to the report of the District Collector dated 14-1-2004 wherein he reported that the petitioner is in possession of 13.62

hectares of land and if the land in question is assigned to him, he would be holding excess lands. It was also reported that the land is not included in the list of assignable lands and that the land is a rocky puramboke. Considering the report of the District Collector, the Government took the view the land cannot be assigned under the Kerala Government Land Assignment Act and Rules. Exhibit P15 order was challenged in the Writ Petition. The learned Single Judge dismissed the writ Petition by the judgment dated 27-5-2005, which is under challenge in this Writ Appeal.

7. The Kerala Government Land Assignment Act, 1960 (hereinafter referred to as the 'Act') was enacted to regulate the assignment of Government lands. Section 3 of the Act provides that Government land may be assigned by the Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. Section 4 provides that when any Government land is proposed to be assigned by the prescribed authority, the Tahsildar of the taluk concerned or any officer empowered in that behalf shall notify that such land will be assigned. The Kerala Land Assigned Rules, 1964 were made by the Government in exercise of the powers conferred by Section 7 of the Act.

8. The definition of the expressions “assignment”, “encroachment not considered objectionable”, “beneficial enjoyment” and “family” in Section 2 (c), 2(cc), 2 (cd) and 2 (d) are relevant for consideration.

> (c) “Assignment” means transfer of land by way of registry and includes a lease and a grant of licence for the use of the land.
>
> (cc) “encroachment not considered objectionable” means encroachment on Government land, which is available for assignment, by a person or a family eligible to get land, on registry under these rules.
>
> (cd) “beneficial enjoyment” means the enjoyment of land for purposes like providing approach road to the assignee’s registered holding and protection of his watercourse, standing crops and buildings.”
>
> (d) “Family” includes a person, his wife or her husband, their children living with or dependent on them and also the parents who are solely dependent on such person.

9. Rule 5 provides for the maximum extent of land that could be assigned on registry for purposes of personal cultivation, house sites and beneficial enjoyment of adjoining registered holdings. Clause (b) of Rule 5 (1) provides as follows:

> “(b) in the case of lands held on lease, whether current or time expired or by way of encroachment not considered objectionable, the lessee or the encroacher as the case may be will be eligible for assignment of not more than 50 cents of land, whether wet or dry, in the plains, and one acre of land, whether wet or dry in hilly tracts. Land, if any, held in excess of this area shall be surrendered to

> Government and no compensation shall be payable for the lands so surrendered."

Clauses (b) of Rule 5 was substituted by the amendment which came into force on 3-3-2005. Prior to amendment, clause (b) provided for assignment of larger extents, namely, not more than one acre in the plains and not more than one acre of wet land or three acres of dry land in hilly tracts, if there are no improvements in the land, and where there are improvements effected on the land by the occupant, not more than two acres in the plains and not more than two acres of wet land or four acres of dry land in hilly tracts. It is stated by the petitioner that the land in question is not in hilly tracts. Therefore, the maximum extent that could be assigned, before the amendment of the Rules in 2005, is one acre or two acres, depending on the question whether the petitioner has effected valuable improvements in the land. The amended Rules would apply to any assignment after the amendment, irrespective of the date of application and therefore, the maximum extent that could be assigned to the petitioner, if he is entitled to get assignment, is not more than fifty cents of land.

10. The petitioner contends that the land in question is surrounded by the other lands belonging to him. The case put forward in the Writ Petition and in the Writ Appeal is that for the beneficial

enjoyment of other lands belonging to him, the land in question is needed. Exhibit P1 application shows that the land in question is bounded on the north and south by the other properties of the petitioner and on the east and west by lands belonging to strangers. There is no case for the petitioner that he cannot enter into his lands otherwise than through the land sought to be assigned. The petitioner has also not established by any acceptable evidence that the land is indispensably required for beneficial enjoyment of adjoining registered holdings. The authority competent to assign land for beneficial enjoyment shall be the Revenue Divisional Officer (vide: Note (1) to Rule 6). Moreoever, Rule 6(2) provides that the extent of Government land that may be assigned on registry when the same is indispensably required for the beneficial enjoyment of adjoining registered holdings shall not exceed, in the case of one registered holding fifteen cents. Rule 6(2) was amended in 2005 and before amendment, the extent that could be assigned was twenty five cents. Assignment for “beneficial enjoyment” is different from assignment for cultivation. A comparison of Rules 5 and 6 would make this position clear. We are of the view that the petitioner has not satisfied the requirement of the definition of “beneficial enjoyment” in Rule 2 (cd) read with Rule 6 (2) of the Rules.

11. The next question to be considered is whether the petitioner is entitled to claim assignment of an extent of 3.20 acres and that too when he is holding large extents of land. Exhibit P4 order passed by the Taluk Land Board shows that the petitioner was in possession of 34.97 acres including an extent of 22.49 acres of exempted land. In Exhibit P1 application, the petitioner stated that he was in possession of 12.48 acres. It is an admitted case that his father got assignment of an extent of 1.15 acres of Government land and he gifted that land to the petitioner. Exhibit P6 order passed by the Commissioner of Land Revenue shows that the petitioner and his family members living with him are holding an extent of 13.05.67 hectares (32.27 acres) of land and that his daughter is in possession of 1.04 hectares (2.57 acres) of land. The maximum extent of land that could be assigned to a person under the Rules is 1 acre, after the amendment of the Rules in 2005. Before the amendment, the maximum extent that could be assigned under Rule 5 in the plains was two acres. Rule 5 (2) of the Rules reads as follows:

> "When a family owns or holds any land over which it has proprietary right or has security of tenure, only the balance of extent of Government land necessary to make up the extent admissible under sub- rule (1) shall be granted to it on registry."

Explanation (iii) to Rule 5 (2) is as follows:

> "For the purpose of calculating the extent of land that may be assigned to a family, the total extent of land

> possessed or held with proprietary right or fixity of tenure by the head of the family and also the members of the family both individually and collectively shall be taken into account. Assignment made in favour of a family under these rules shall, for the purpose of calculating the maximum extent that may be so assigned, include assignment made to members of the family both individually and collectively, the total extent so assigned not exceeding the maximum area that may be assigned to that family. The area under encroachment by a member of a family shall, for the purpose of these rules, be deemed as the area under encroachment by the family."

12. The definition of 'family' under Rule 2 (d) is wide. It includes children and even parents. Children who have attained majority also come within the definition of 'family'. The only requirement is that the children should be either living with the parents or dependent on them. So far as parents are concerned, they must be solely dependent on the person concerned. The definition of 'family' is wider than the family as contemplated in Section 82 of the Kerala Land Reforms Act which provides for ceiling area. By the operation of Rule 5 (2) read with Explanation (iii), the petitioner cannot claim any extent of land on registry since he holds more than the extent which could be assigned under the Rules. Such a person cannot aspire for any assignment of Government land on registry under Rule 5. It is an admitted case that his father got assignment of 1.15 acres of Government land on registry and that land came to vest in the petitioner. On that count also, the petitioner cannot claim assignment of Government land under Rule 5.

13. Rule 7 of the Rules would not be helpful to the petitioner. Rule 7 (1) of the Rules reads as follows:

> "7. Priority to be observed in assignment:- (1) Where any person is in occupation of Government lands under lease, whether current or time expired, or by way of encroachment not considered objectionable such land if such occupation is before the 1st day of August, 1971, shall be assigned to him on registry:
>
> Provided that the total extent of land, if any, owned or held by him in proprietary right or with security of tenure is less than the limits laid down in sub- rule (1) of Rule 5 or the annual family income from sources other than the Government lands held by him is below Rs. 10,000/-"

Rule 7(3) is mandatory in nature. It reads thus:

> "(3) No registry shall be granted to any family in occupation of Government land either under a lease, current or time expired or by way of encroachment, unless it surrenders to Government, without claiming any compensation, the land in excess of the extent proposed to be registered in its favour. If there is excess land, in its possession and it is not willing to surrender the excess land eviction will be resorted to."

Since the petitioner holds lands in excess of the limits provided in Rule 5 (1), he cannot claim any priority also.

14. On another ground also, the petitioner is not entitled to succeed. It is reported that major portion of the land is rocky ("para puramboke"). If so, it comes under Rule 11 (2) (viii) of the Rules and it

cannot be assigned, as rightly held by the Government in Exhibit P15 order. Rule 11 (1) of the Rules provides that before granting registry, Government shall cause to be prepared lists of the lands which should be reserved for Government or public purposes in each village and lists of the lands which may be made available for assignment in each village. Rule 11 (2) states the categories of lands to be reserved for Government or public purposes. They include the items mentioned in clauses (i) to (x) of sub Rule (2) of Rule 11. Clause (viii) therein is the following: “Lands containing or believed to contain valuable minerals, quarries etc.” The Act or the Rules does not define “minerals” and “quarries”. Section 2(jj) of the Mines Act (Act 35 of 1952) defines “minerals” thus: “Minerals” means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum).” Section 3 of the Mines and Minerals (Registration and Development) Act, 1957 defines the expressions “minerals”, and “minor minerals” thus:

> “(a) “minerals” includes all minerals except mineral oils.
>
> (e) “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.”
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> The Chambers Dictionary defines “minerals” thus:

> "Any of various classes of inorganic substances, *esp*. solid, naturally occurring and crystalline in form; a substance obtained by mining; ore; a substance neither animal nor vegetable."

The meaning of "quarry" as shown in Chambers Dictionary is as follows:

> "an open excavation for building- stone, slate, etc; any source of building-stone, etc; a great mass of stone or rock."

To constitute a "quarry" within the meaning of clause (viii) of Rule 11 (2), it is not necessary that actual quarrying should be undertaken in the land. It is sufficient that the land has the potential to be converted into a quarry as understood in the common parlance. Rock available in the land and that too to a great extent, would satisfy the requirement of the land being the one containing valuable minerals, within the meaning of clause (viii). It would also satisfy the term "quarry". It is also to be noted that after the words "valuable minerals" and "quarries", the expression "etc." also occurs in clause (viii) of Rule 11 (2). We are of the view that the land would come within the purview of Rule 11.

15. The various provisions in the Kerala Government Land Assignment Act and the Kerala Land Assignment Rules would unmistakably show that the Act and Rules are intended to protect

landless people by assigning to them Governnment lands for cultivation and other purposes. The Act provides for assignment of Government land absolutely or subject to such restrictions, limitations and conditions as may be prescribed. The Rules provides for assignment of lands on registry for purposes of personal cultivation. The Rules also provides for granting assignment of small extents of land for constructing houses and for the beneficial enjoyment of adjoining registered holdings. The Rules contain provisions for extending priority to landless people, members of Scheduled Caste and Scheduled Tribes, Ex-servicemen, persons disabled in active military service, persons who are dependents of those who are killed or disabled while in active military service, small holders whose family income is less than Rs. 10,000/-, certain category of kumkidars etc. The procedure for assignment is also provided in the Rules. Provision is made for preparing the lists of lands to be reserved for Government or public purposes and the lands to be set apart for assignment on registry. The lists are to be approved by the Government or an authorized authority. The authority to approve the list of lands available for lease or license shall be District Collector. Various authorities are also provided to whom the applications under the different categories are to be submitted. We are of the view that the Act and Rules are not intended for enriching persons who hold extensive lands. Assignment on Registry of Government lands to such

persons would defeat the very purpose of the Act and Rules. There is no vested right in any person to claim assignment on registry of Government land. The claim made by the petitioner originated and continued on encroachment. Such a person cannot have any legal right to claim that land. Provision for assignment of lands to encroachers is with a specific purpose. It is intended to protect such of the encroachers who are landless and downtrodden. They too have no vested right to get assignment on registry. The scheme of the Act and the Rules would unmistakably show it. Mighty people do not come anywhere near the benevolent protective umbrella of the Act and Rules. True, a person may desire to annex to his property the neighbouring lands, though it is Government land. Such a desire is not recognised or protected under the Act and Rules.

16. Next, we shall consider whether the petitioner can take shelter under Rule 24. Rule 24 reads thus:

> "24. Notwithstanding anything contained in these rules the Government may, if they consider it necessary so to do in public interest, assign land dispensing with any of the provisions contained in these rules and subject to such conditions, if any, as they may impose."

To invoke Rule 24, Government should consider it necessary in **public interest** to assign land. Public interest is the main ingredient for the

application of Rule 24. Public interest is interest of the people at large. The purpose for which land is to be assigned invoking Rule 24 should be one for the benefit the public in any sense of the term. Private interest of an individual to acquire more property could never be termed as public interest. It is relevant to note that Rule 24 empowers the Government to assign land dispensing with any of the provisions of the Rules alone. It does not empower the Government to dispense with any of the provisions of the Act. Section 3 (2) of the Act is relevant in this context. It reads:

> "(2) No Government land assignable for public purpose may be assigned under sub-section (1) without consulting the local authority as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or the Kerala Municipality Act, 1994 (20 of 1994) as the case may be and if such local authority required such land, for carrying out any of the functions assigned to it, Government may set apart such land for that purpose."

We have held that the land in question comes under Rule 11(2) (viii). Such a land cannot be assigned without consulting the local authority. Rule 24, in our view, does not empower the Government to completely do away with the scheme of the Act and Rules and their purpose and intent. Rule 24 could only be exercised in limited sphere and that too adhering to the paramount consideration of public interest. We hold that the petitioner cannot take recourse to Rule 24 as well.

For the aforesaid reasons, we are of the view that there is no merit in the Writ Appeal. The Writ Appeal is accordingly dismissed with costs, which we quantify at Rs. 2,500/-.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

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JUDGMENT

July, 2007